



# ACF INDUSTRIES

INCORPORATED

750 THIRD AVENUE, NEW YORK, N. Y. 10017, (212) 986-8600, CABLE ADDRESS: ACFUSA

RECEIVED

APR 29 12 41 PM '80

RECORDATION NO. 11736 APR 21, 1980

I. C. C.  
FEE OPERATION BR.

0-120A101

APR 29 1980 - 12 45 PM

APR 29 1980

Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

INTERSTATE COMMERCE COMMISSION

Fee 50.00

Dear Sir:

RCB Washington, D. C.

We are enclosing herewith for filing with the Commission, pursuant to 49 U.S.C. Section 11303 and the regulations thereunder four (4) original counterparts of an Agreement dated as of April 21, 1980 between the following parties:

- (a) Manufacturer: ACF Industries, Incorporated  
750 Third Avenue  
New York, New York 10017
- (b) Vendee: Brae Corporation  
3 Embarcadero Center  
San Francisco, California 94111

The equipment covered by the above document is described as follows:

100 - 70 Ton 50' Box Cars, lettered and numbered:  
75 Cars POTB 151 through 225, inclusive.  
25 Cars IAT 1000 through 1024, inclusive.

No prior recordation of the above document has been made.

We also enclose our check drawn to the order of the Commission in the sum of \$50.00 in payment of the recordation fee in this connection.

Please be kind enough to see that the enclosure is cross-indexed under the names of both parties thereto. We request that three (3) counterparts bearing the Commission's recordation data be returned to the bearer. Your letter confirming recordation thereof should be sent directly to the undersigned.

Sincerely yours,

R. N. McLaughlin  
Assistant Treasurer

RNM:dch

Encs.

cc: R. G. Pierce, Esq.  
Hardy, Peal, Rawlings, Werner & Coogan  
750 Third Avenue  
New York, New York 10017

*Handwritten notes:*  
- "I will number" (next to the list of parties)  
- "Covered by I.C.C." (written vertically along the left margin)

**Interstate Commerce Commission**  
Washington, D.C. 20423

4/29/80

OFFICE OF THE SECRETARY

R.N. McLaughlin  
Assistant Treasurer  
ACF Industries  
750 Third Avenue  
New York, N.Y. 10017

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/29/80 at 12:45pm, and assigned re-recording number(s). 11736

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

THIS AGREEMENT, dated as of April 21, 1980, by and between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (hereinafter called the "Manufacturer"), and Brae Corporation, a California corporation (hereinafter called the "Vendee"),

RECORDATION NO. 11736 Filed 1425

W I T N E S S E T H :

APR 29 1980 12 45 PM

The Manufacturer and the Vendee have heretofore entered into the Purchase Agreement (hereinafter called the "Purchase Agreement") referred to in Section 1 of Schedule A hereto attached (hereinafter called "Schedule A") whereunder the Manufacturer has agreed to construct and deliver to the Vendee at the delivery point specified in Section 2 of Schedule A and the Vendee has agreed to accept and pay for the Railroad equipment (hereinafter called the "Cars") described in Section 3 of Schedule A; and

Inasmuch as the Vendee has consummated financing arrangements for acquisition of the Cars with Teachers Insurance & Annuity Association, but such financing will not permit the Vendee to pay for the Cars under the terms of the Purchase Agreement prior to shipment of the Cars from the Manufacturer's plant, the Vendee (in order that it may use the Cars during the time between shipment from the Manufacturer's plant and payment of the purchase price under the above financing arrangements) has requested the Manufacturer to give the Vendee temporary custody and possession of the Cars on completion, solely as a bailee of the Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the premises and of the promises of the parties herein contained, the parties agree as follows:

1. The Manufacturer agrees to deliver the Cars to the Vendee and the Vendee agrees to accept the Cars from the Manufacturer at the delivery point above referred to. The rights of the Vendee hereunder in respect of each Car shall commence on the date of acceptance of such Car and end on the earlier of May 31, 1980, or the date of payment of the purchase price of such Car under the above financing arrangements. When the purchase price of all the Cars has been paid, this Agreement shall automatically be terminated without further action by or notice to any party concerned. On delivery of each Car to the Vendee the Vendee will assume the responsibility and risk of loss with respect to such Car.

2. After the Vendee's representative finds that each Car upon completion has been built in accordance with the requirements of the Purchase Agreement, he will execute and deliver to the Manufacturer a certificate of inspection certifying to that effect. Upon delivery of each Car to the delivery point, the Vendee's representative will execute a certificate of acceptance acknowledging the receipt of delivery of each Car under this Agreement. Title to the Cars shall remain in the Manufacturer and the Vendee's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. The Vendee, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission

for recordation under Section 20c of the Interstate Commerce Act. In addition, the Vendee shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cars.

3. The Vendee agrees that it will permit no liens of any kind to attach to the Cars; and that it will

(a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind; and

(b) pay any and all taxes, fines, charges, and penalties

that may accrue or be assessed or imposed upon the Cars or the Manufacturer because of its ownership or because of the use, marking, operation, management or handling of the Cars by the Vendee during the term of this Agreement. The Vendee's obligations contained in this paragraph shall survive the termination of this Agreement by mutual agreement or otherwise.

4. The Vendee will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement. Upon the expiration or other termination of this Agreement, other than by payment of the purchase price, the Vendee will surrender and deliver up the Cars in good order and running condition to Manufacturer free of all charges at the point designated by the Manufacturer.

5. Prior to the delivery of each Car to the Vendee it will be numbered with a car number as set forth in Section 3 of Schedule A, and there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by the Vendee upon each side of each Car in letters not less than one inch in height the words set forth in Section 5 of Schedule A.

6. The Vendee agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to the Vendee of the Cars, as contemplated by this Agreement, shall not relieve the Vendee of its obligations to accept, take, and pay for the Cars in accordance with the terms of the Purchase Agreement, or impair any of the Manufacturer's rights under the Purchase Agreement, which is by reference made a part of this Agreement as fully as though expressly set forth herein.

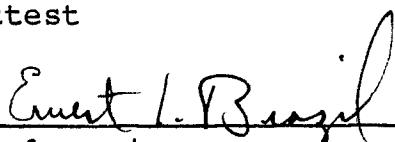
Attest



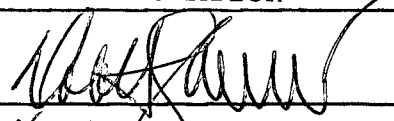
ACF INDUSTRIES, INCORPORATED

By   
Treasurer

Attest

  
Secretary

BRAE CORPORATION

By   
Vice President

## SCHEDULE A

### SECTION 1.

#### Purchase Agreement

St. Mary's Railroad Company order R-99 of 9/25/78  
ACF Industries, Incorporated acknowledgment of 1/11/79  
Partial Purchase Order Assignment between St. Mary's  
Railroad Company and Brae Corporation dated as of 11/5/79.  
Consent of ACF Industries, Incorporated dated as of 11/9/79.

### SECTION 2.

#### Delivery Point

St. Louis, Missouri

### SECTION 3.

#### Railroad Equipment

100 - 70 Ton 50' Box Cars, lettered and numbered:  
75 Cars POTB 151 through 225, inclusive.  
25 Cars IAT 1000 through 1024, inclusive.

### SECTION 4.

#### Purchase Price (Base price + estimated escalation)

75 Cars - \$47,450 each

25 Cars - 47,250 each

Subject to adjustment in accordance with the terms of  
the purchase agreement.

### SECTION 5.

#### Markings on Cars

See Section 3 above

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NEW YORK )

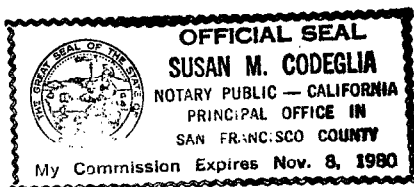
On this 21st day of April, 1980, before me personally appeared H. A. Borst, to me personally known, who, being by me duly sworn, says that he is Treasurer of ACF Industries, Incorporated, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Anthony M. Romanello

ANTHONY M. ROMANELLO  
Notary Public, State of New York  
No. 31-4703607  
Qualified in New York County  
Commission Expires March 30, 1981

STATE OF *California* )  
 ) SS.:  
COUNTY OF *San Francisco* )

On this *28th* day of *April*, 1980, before me personally appeared *Donald H. Gleason* to me personally known, who, being by me duly sworn says that he is *Vice President-Operations* of *BRAE Corporation* that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Susan M. Codeglia

*My Commission Expires  
on Nov. 8, 1980*